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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**CENTURY 21 REAL ESTATE LLC,
Plaintiff,**

vs.

**WILLIAM CLEMENT COMPANY,
INC. ET AL.,
Defendants.**

Case No.: SACV 13-1648 DOC(DFMx)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT [17]**

Before the Court is Plaintiff Century 21 Real Estate's ("Century 21") Motion for Default Judgment against Defendant William Clement Company, Inc. ("Clement") and Clement Lombardi ("Lombardi"), (together, "Defendants") (Dkt. 17). Having considered the motion and the accompanying record, the Court GRANTS Century 21's Motion for Default Judgment.

I. Background

The Court draws the following facts from Century 21's Complaint (Dkt. 1).

1 William Clement, Inc. entered into a Century 21 Real Estate Franchise Agreement with
 2 Plaintiff that contained a commencement date of February 5, 1999(the "Agreement"). Compl. ¶
 3 7. Under the Agreement, William Clement became a franchisee of Plaintiff as a real estate
 4 brokerage business. Clement's franchise was located at 9036 Adams Avenue, Huntington
 5 Beach, California 92646. *Id.* ¶ 8.

6 The terms of the Agreement granted Clement a non-exclusive license to utilize Plaintiff's
 7 trademarks and marketing system. *Id.* Clement agreed in return to (1) to pay to Plaintiff six
 8 percent (6%) of all of William Clement's gross revenues under Section 8 of the Agreement
 9 ("royalty fees") and (2) to pay 2% of its gross revenues for a National Advertising Fund
 10 ("NAF") for advertising expenses under Section 9 of the Agreement, with a minimum monthly
 11 NAF fee as specified in the Agreement. *Id.* William Clement also agreed to permit Plaintiff to
 12 audit its books and records at any reasonable time and agreed to pay, with interest, any sums
 13 determined to be owing based on this audit. *Id.* Lombardi signed a Guaranty of Payment and
 14 Performance ("Guaranty"). *Id.* ¶ 9. Defendant Lombardi personally guaranteed the payment
 15 and performance of Clement's obligations under the Agreement. *Id.*; *see also* Ex. A at 47-48.

16 After entering into the Agreement and operating as a franchisee, Clement did not pay
 17 amounts owing under the Agreement, including royalty fees, and NAF fees, and failed to report
 18 on closed transactions, all of which constitute a breach of the Agreement. *Id.* ¶ 10. Plaintiff
 19 properly notified Defendants of these defaults in writing and provided the appropriate
 20 opportunity to cure required under the applicable Agreement. *Id.* Defendants did not cure these
 21 defaults. *Id.*

22 Accordingly, Plaintiff exercised its right to terminate the Agreement and terminated the
 23 Agreement effective February 2, 2010. *Id.* ¶ 11. The Agreement provides for the recovery of
 24 attorneys' fees and costs to any party prevailing in a legal proceeding in connection with the
 25 Agreement. *Id.* ¶ 12, Ex. A at 21.

26 **II. Legal Standard**

27 The decision to grant or deny a motion for default judgment is within the district court's
 28 discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). After the clerk enters a

1 default against the defendant, the factual allegations of the complaint, except those relating to
 2 damages, is taken as true. Fed. R. Civ. P. 8(b)(6); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d
 3 915, 917-18 (9th Cir. 1987) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.
 4 1977)). The district court considers seven factors when deciding whether to grant the motion:
 5 “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3)
 6 the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility
 7 of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and
 8 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
 9 merits.” *Eitel*, 782 F.2d at 1471-72.

10 Because the plaintiff’s allegations of damages are not presumed true, a court granting a
 11 motion for default must “determine the amount and character of the relief” due. *Landstar*
 12 *Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (internal
 13 quotation marks omitted).

14 **III. Discussion**

15 Century 21 moves for default judgment because Defendants have not answered the
 16 Complaint. For the reasons discussed below, default judgment is warranted.

17 **a. Local Rule 55-1, Compliance with the Local Rules and Federal Rule of** 18 **Civil Procedure 55(a)**

19 Century 21 has satisfied its obligations under Federal Rule of Civil Procedure 55(a) and
 20 Local Rules 55-1 and 55-2. Under those Rules, a movant must satisfy certain conditions before
 21 moving for default judgment, such as having the Clerk of the Court enter default against the
 22 non-movant. *See* Fed. R. Civ. P. 55(a); L.R. 55-1, 55-2. Century 21 has shown that it requested
 23 default judgment against the Defendants, that default was entered against the Defendants as to
 24 Century 21’s Complaint on January 10, 2014 (Dkt. 13), that Century 21 is not an infant or an
 25 incompetent person, and that the Servicemembers Civil Relief Act (50 U.S.C. § 521) does not
 26 apply. *See* Shao Decl. ¶ 7.

27 **b. Eitel Factors**

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1 Because Century 21 satisfied the basic prerequisites for filing a motion for default
2 judgment, the Court turns to the *Eitel* factors to determine whether entry of default judgment is
3 appropriate.

4 **i. Possibility of Prejudice to the Plaintiff**

5 The first *Eitel* factor supports granting default judgment because Century 21 has no other
6 means to collect compensation from Defendants, leaving Century 21 without a proper remedy
7 absent default judgment. *See Landstar*, 725 F. Supp. 2d at 920; *PepsiCo, Inc. v. Cal. Sec. Cans*,
8 238 F. Supp. 2d 1172, 1176 (C.D. Cal 2002).

9 **ii. Merits of Plaintiff's Claims and the Sufficiency of the Complaint**

10 The second and third *Eitel* factors look to whether the Plaintiff's Complaint has
11 sufficiently stated a claim for relief. *PepsiCo*, 238 F. Supp. 2d at 1175. The claims in this case
12 are premised on violations of the Franchise Agreement.

13 To prove a breach of contract claim in the state of California, a Plaintiff must show: (1)
14 the existence of a contract; (2) that he has performed or that his nonperformance is excused; (3)
15 defendant's breach of the contract; and (4) damages resulting from the breach. *Greenwich Ins.*
16 *Co. v. Rodgers*, 729 F. Supp. 2d 1158, 1163 (C.D. Cal. 2010) (citing *Troyk v. Farmers Group,*
17 *Inc.*, 171 Cal. App. 4th 1305, 1352 (2009)).

18 Under the Franchise Agreement, Defendants owed Plaintiff Franchise Service Fees of 6%
19 of the gross revenue earned (Agreement § 8); National Advertising Fund fees of 2% of the gross
20 revenue earned (Agreement § 9); and a National Advertising Fund monthly contribution
21 (Agreement § 9). When Defendants failed to pay these fees, Plaintiff notified Defendants of the
22 violation and provided an opportunity to cure. Defendants did not pay any of the sums owing.
23 Plaintiff's Complaint pleads the existence of the Franchise Agreement, performance by Plaintiff,
24 breach by Defendants, and damages therefrom. This *Eitel* factor therefore weighs in favor of
25 default judgment.

26 **iii. Sum of Money at Stake**

27 The fourth *Eitel* factor requires that the damages sought be "proportional to the harm
28 caused by defendant's conduct." *Landstar*, 724 F. Supp. 2d at 921. Here, Century 21 seeks

1 \$120,192.20 in damages from unpaid fees. Mot. at 7. Additionally, Century 21 seeks interest
2 on the damages and attorneys' fees. *Id.*

3 Though Century 21 seeks a large amount, it is proportional to the harm caused by
4 Defendants' conduct. *See Landstar*, 724 F. Supp. 2d at 921 (finding \$243,817.34 in damages
5 appropriate in default judgment because it was consistent with the terms of the contract);
6 *Orange Cnty. Elec. Indus. Health & Welfare Trust Fund v. Moore Elec. Contracting, Inc.*, No.
7 11-CV-00942-LHK, 2012 WL 4120348, at * 4, (N.D. Cal. Sept. 18, 2012) (finding damages of
8 \$111,266.98 appropriate in default judgment to plaintiff in same position had defendant fulfilled
9 its obligation under the agreement). Accordingly, this factor favors entry of default judgment.

10 **iv. Possibility of Dispute Concerning Material Facts**

11 Where the plaintiff's complaint is well-pleaded and the defendant makes no effort to
12 properly respond, the likelihood of disputed facts is very low. *See Landstar*, 725 F. Supp. 2d at
13 921-22. Century 21's complaint is well-pleaded and Defendants have yet to respond to the
14 complaint. This factor weighs in favor of default judgment.

15 **v. Possibility of Excusable Neglect**

16 The sixth *Eitel* factor favors default judgment when the defendant has been properly
17 served or the plaintiff demonstrates that the defendant was aware of the lawsuit. *Id.* at 911.
18 Century 21 served the complaint in this action on Lombardi and Clement by personal service on
19 October 31, 2013. *See* Proofs of Service (Dkts. 5, 6). Thus, this factor favors default judgment.

20 **vi. Policy Favoring Decision on the Merits**

21 Although decisions on the merits are preferred, this does not prevent a court from
22 entering judgment where the defendant refuses to respond. *Warner Bros. Entm't Inc. v. Caridi*,
23 346 F. Supp. 2d 1068, 1073 (C.D. Cal. 2004). Where the defendant's failure to appear makes
24 decision on the merits impossible, default judgment is appropriate. *Craigslist, Inc. v.*
25 *Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010). As Defendants properly
26 served and failed to respond in any way, default judgment is appropriate. Accordingly, other
27 than the general policy favoring decisions on the merits, the *Eitel* factors support entry of default
28 judgment.

1 **c. Remedies**

2 Century 21 seeks 1) \$120,192.20 in compensatory damages for fees owed under the
3 Franchise Agreement, 2) \$9,757.27 in attorneys' fees under Section 20 of the Franchise
4 Agreement, and 3) postjudgment interest.

5 **i. Contract Damages**

6 Plaintiff bears the burden of proving all damages sought through entry of default
7 judgment. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal.
8 2003). To determine damages, a court may rely on the declarations submitted by the plaintiff or
9 order an evidentiary hearing. Fed. R. Civ. Pro. 55(b)(2).

10 Century 21 submits the declaration of a Senior Director for Real Estate Financial
11 Services, Jacqueline Bertet. The declaration reviews the history of the parties' relationship and
12 the billing procedure. Exhibit E to the Declaration includes the relevant invoices establishing
13 the damages in this case. *See Bertet Decl. Ex. E.* These invoices correspond to the requested
14 damages, and so Plaintiff has proven damages in the amount of \$120,192.20.

15 **ii. Interest**

16 Plaintiff requests post-judgment interest, but does not specify the basis in statute or the
17 Local Rules for this interest. The Court therefore DENIES interest.

18 **iii. Attorneys' Fees**

19 Century 21 seeks \$9,757.27 in attorneys' fees pursuant to Section 20 of the Franchise
20 Agreement. However, Century 21 submits only a blanket declaration justifying its fees, with no
21 breakdown of the hours worked by specific personnel on specific tasks. This lacks sufficient
22 specificity for the Court to award fees. *See Lotenero v. Cripps*, 2012 WL 525586 (E.D. Cal.
23 Feb. 16, 2012) (citing *Welch v. Metropolitan Life Ins., Co.*, 489 F.3d 942, 948 (9th Cir. 2007))
24 ("Similarly, with respect to a request for attorney fees, "block billing" or failing to specify the
25 amount of time spent on each task makes it impossible to determine if the requested fees are
26 reasonable.").

27 Local Rule 55-3 allows recovery of reasonable attorneys' fees pursuant to a contract upon
28 entry of a default judgment. L.R. 55-3. The schedule provides for \$5,600 plus 2% of any

1 amount over \$100,000. *Id.* Two percent of \$120,192.20 is \$2,403.84. Therefore, the
2 appropriate interest calculation under Rule 55-3 is \$8,003.84. Accordingly, the Court awards
3 Century 21 \$8,003.84 in attorneys' fees.

4 **IV. Disposition**

5 For the forgoing reasons discussed above, the Court GRANTS the Motion for default
6 judgment.

7 The Court GRANTS Century 21: 1) \$120,192.20 in damages and 2) \$8,003.84 in
8 attorneys' fees.

9 Plaintiff is to file a judgment in accordance with this order within ten (10) days of this
10 order's filing date.

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12 DATED: May 30, 2014

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DAVID O. CARTER
15 UNITED STATES DISTRICT JUDGE
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